New Nouveau Brunswick

2012 – 2013

Annual Report

Family Income Security Appeal Board

New Nouveau Brunswick
CANADA

January 31, 2014

Honorable Madeleine Dubé
Minister of Social Development
Province of New Brunswick

Dear Mrs. Minister:

On behalf of the Family Income Security Appeal Board, I have the honour to submit the Annual Report for the fiscal year of April 1, 2012 to March 31, 2013.

Yours,

Vivian Hitchman
Chair

c.c.: Members of the Board

Family Income Security Appeal Board
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MESSAGE FROM THE CHAIRPERSON

The Family Income Security Appeal Board continued to fulfill its mandate by hearing appeals within the jurisdiction under the Act during the fiscal year ending March 31, 2013.

During this period, the Board operated with one Chairperson, namely; John Paul Murchland and two Vice-Chairpersons; Vivian Hitchman and Pierre Godin.

On August 31, 2012, the Chairperson, John Paul Murchland decided to take his retirement, therefore, Vivian Hitchman became Acting Chairperson and subsequently, she was appointed as the new Chairperson, effective December 1, 2012.

Hearing of appeals is a process that is becoming increasingly more complex. As a result, the Board members must demonstrate a high level of competence and understanding of the relevant legislation, coupled with compassion, while maintaining the Principles of Natural Justice. They must be prepared to make objective decisions within the *Family Income Security Act* and Regulations based on the findings of fact and all the evidence presented at the hearing.

Inherent in the Board's mandate is a demand of a high level of appreciation of the Principles of Administrative Law and Natural Justice.

This Annual Report, presented to the Minister of Social Development: provides a description of the Board's mandate; reviews its historical development, outlines its procedures; and provides a summary of the subject of appeals and overview of the quantitative features of the service provided to the residents of New Brunswick by FISAB during the 2012-2013 fiscal year.

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INTRODUCTION AND BACKGROUND OF THE BOARD

Provincial Appeal Boards were established as a result of a Canada wide review of Social Policy culminating under the enactment of a Federal legislation, known as the Canada Assistance Program (CAP). New Brunswick's initiative resulted in the Social Welfare Appeals Board which was established in 1970 under the *Social Welfare Act* and Regulations to permit applicants and clients to seek an independent review of a Departmental decision. It is a quasi-judicial, independent tribunal, based on Administrative Law of Natural Justice.

Subsequently, the *Family Income Security Act* and Regulation 95-61 were proclaimed. Effective April 1, 1996,"The Social Welfare Appeal Board is terminated" as set out in Section 30(1) of Regulation 95-61. Section 30(2) "...responsibilities and liabilities of the Social Welfare Appeals Board are,... transferred to and vested in ...the Regional Family Income Security Appeal Boards created under the General Regulation - *Family Income Security Act*..."

Effective April 1, 2002, the Regional Family Income Security Appeal Boards are terminated further to section 14(2) of New Brunswick Regulation 95-61. A new Board was established under subsection 24(1) of New Brunswick Regulation 95-61 which is now called the Family Income Security Appeal Board.

The Regulation 95-61 ensures that the Family Income Security Appeal Board is composed of a Chairperson, one or two Vice-Chairpersons, and at least fourteen members who shall be appointed by the Lieutenant-Governor in Council.

Each member of the Board, including the Chairperson and Vice-Chairpersons, are appointed for a term of not more than three years and may be reappointed for subsequent terms of not more than three years.

MEMBERS OF THE BOARD

John Paul Murchland, Chairperson	Fredericton
**Retired on August 31, 2012*	
Vivian Hitchman, Vice-Chairperson and Acting Chairperson	Lower Newcastle
**New Chairperson effective December 1, 2012*	
Pierre Godin, Vice-Chairperson	Petit-Rocher
Aroon Bailey, Member	Newcastle Centre
Charles Clowater, Member	Bath
Francine Mulherin, Member	Grand-Sault
Gerri LeBlanc, Member	Shediac
Gildard Chiasson, Member	Bertrand
Hélène Fortin, Member	Shippagan
Isabel Hicks, Member	Riverview
Jacqueline R. Landry, Member	Moncton
Janet Lang Perry, Member	Bedell
Jeanie Saunders, Member	Rothesay
Lloyd Sutherland, Member	New Maryland
Margaret (Peggy) Kirkpatrick, Member	Miramichi
Micheline Cyr, Member	Grand Falls
Nancy Dubé, Member	Moncton
Paul-Émile Thériault	Fredericton
Robert Ouellette, Member	Edmundston
Ruby Dunn, Member	Derby
Struan Smith, Member	Moncton
Terry Ogilvie, Member	Salisbury
Victor J. Luce, Member	Rivière à la Truite

JURISDICTION

The Appeal Board hearing is the final step in a three-tiered appeal process. The first two steps are internal administrative reviews. The third and final step is an appeal to an external review body, the Family Income Security Appeal Board. The Board is required, by its quasi-judicial nature, to conduct hearings in a court-like manner, although less formally, while still applying the rules of Natural Justice. The Board must provide a fair and unbiased assessment of the facts presented during a hearing as a basis for its decision.

Notwithstanding, the focal point of the Board's mandate is to ascertain the truth of the matter before them. To ensure that the Board have the power and authority necessary to accomplish its mandate, the Government of New Brunswick has provided the Board "... all the powers conferred on a Commissioner or Commissioners appointed under the *Inquiries Act* and all provisions of that Act, when applicable to and not inconsistent with the provisions of this Regulation, shall apply to an appeal." (Section 28(5) of Regulation 95-61 under the *Family Income Security Act*.)

Decisions of the Board are final and conclusive, as set out in Section 29(1), of Regulation 95-61, *Family Income Security Act*. However, parties to the hearing who believes that the Appeal Board has erred in law, may appeal to the Court of Queen's Bench for a judicial review of the decision. The decision will be set aside if the Courts find the Board violated the rules or did not follow the principles of Natural Justice.

The Appeal Board hears cases at the request of appellants relating to matters under the Family Income Security Act and Regulation 95-61. The Board is bound by the Act and Regulation but may choose not to follow the Departmental Policy Guidelines.

Clients are advised that the Board do not make regulations and cannot change them. However, the Board does make recommendations to the Minister. The Board will provide an open and unbiased review of the circumstance surrounding the decision made by the Department. The Board is not a legislative body.

The Board may also investigate and report to the Minister on any matter under the Act or Regulations that may be referred to them by the Minister.

HISTORICAL REVIEW

When the Government of Canada first established tribunals and boards on a large scale at the beginning of this century, it did not detail their procedures. It fell to the Courts to determine whether these bodies were to conform to normal judicial methods. As a result, tribunal's procedures developed gradually over time, based on the principles of Administrative Law.

In 1970, the Social Welfare Appeals Board was established as a quasi-judicial tribunal, subject to the Rules of Natural Justice. The two principles most commonly called the "Rules of Natural Justice" were outlined by Lord Haldane:

(1) They must deal with the question referred to them without bias;
(2) They must give to each of the parties the opportunity of adequately presenting their case.

To ensure the freedom from bias required by these Rules of Natural Justice, the Appeal Board maintains an "arms-length" relationship to Government. Appointments to the Board are made by the Lieutenant-Governor in Council.

Section 24(3) of the Regulation 95-61 further supports the objective of independence. This regulation prohibits any person from serving on the Board who was employed in the Civil Service of the Province within the last six months prior to their appointment.

The legislature also wishes to guard against Departmental interference in the actions of the Appeal Board. Thus, "... the decision of the majority of the members of a Board who hear an appeal shall be final and conclusive ..." (Section 29(1) of Regulation 95-61 under the *Family Income Security Act*), but "... an appeal shall be decided on its own merits and in accordance with the Act and this Regulation..." (Section 28(9) of Regulation 95-61 under the *Family Income Security Act*). This means simply that while the Board is independent of the Department, both the Department and the Appeal Board are bound by the provisions of the *Family Income Security Act* and Regulations.

HEARING LOCATIONS

Hearings are held on neutral ground in the community where the client is served by the Department of Social Development. The Board obtains or rents space accessible to the physically challenged in community colleges, municipal buildings, community centers or, as a last resort, hotel conference rooms.

Hearings are held in the following communities:

Region 1 - Richibucto / Sackville / Shediac / Moncton

Region 2 - Saint John / Sussex / St. Stephen

Region 3 - Fredericton / Woodstock / Perth-Andover

Region 4 - Edmundston / Grand-Falls

Region 5 - Campbellton / Kedgwick

Region 6 - Bathurst

Region 7 - Miramichi / Néguac

Region 8 - Caraquet / Shippagan / Tracadie-Sheila

STATISTICAL REVIEW OF DECISIONS

There were 172 notice of appeals received in 2012 -2013. During the past nine years the numbers of appeals were as follows:

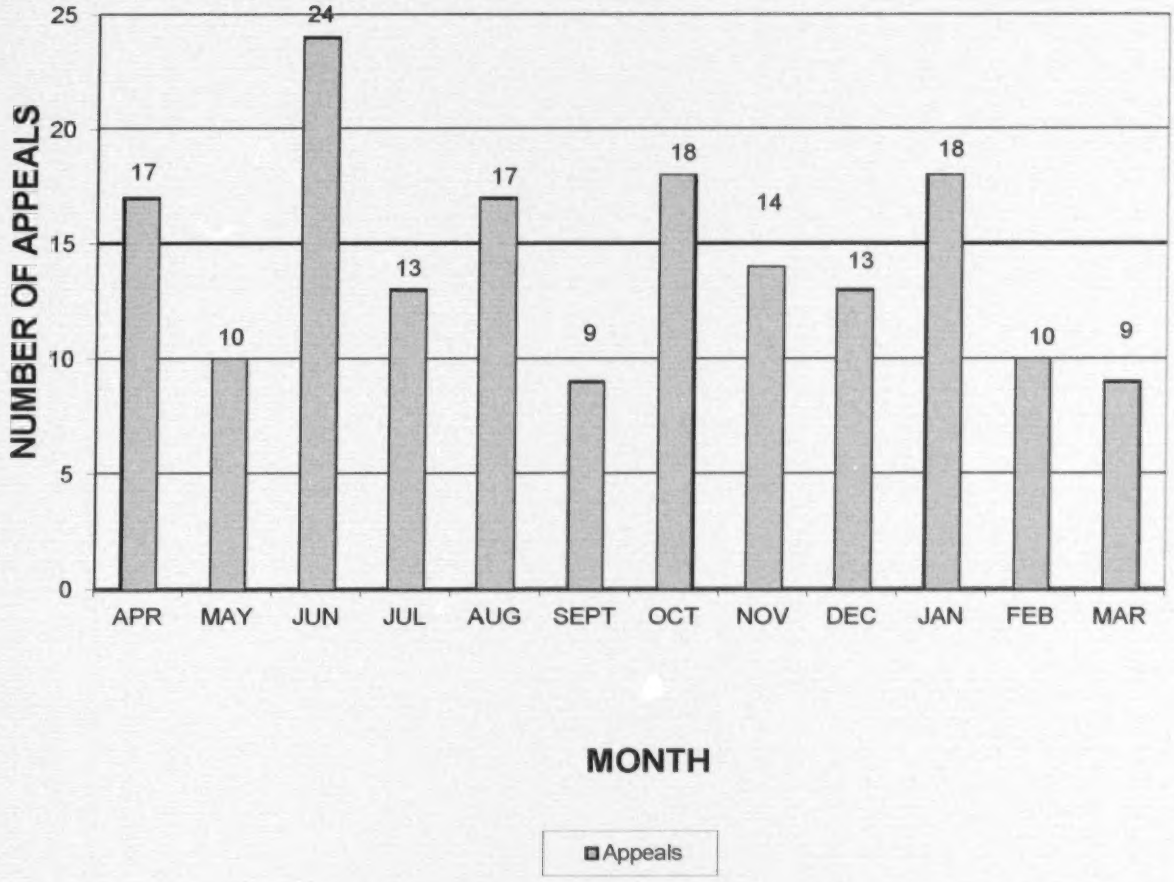
2012-2013 - 172	2009-2010 - 119	2006-2007 - 148
2011-2012 - 107	2008-2009 - 111	2005-2006 - 181
2010-2011 - 131	2007-2008 - 126	2004-2005 - 195

Out of the 172 notice of appeals received in the fiscal year 2012 - 2013, 44 were allowed, 128 were dismissed (which includes 15 cancelled and 14 no shows). The ratio of males to females were 70 (41%) to 102 (59%) respectively.

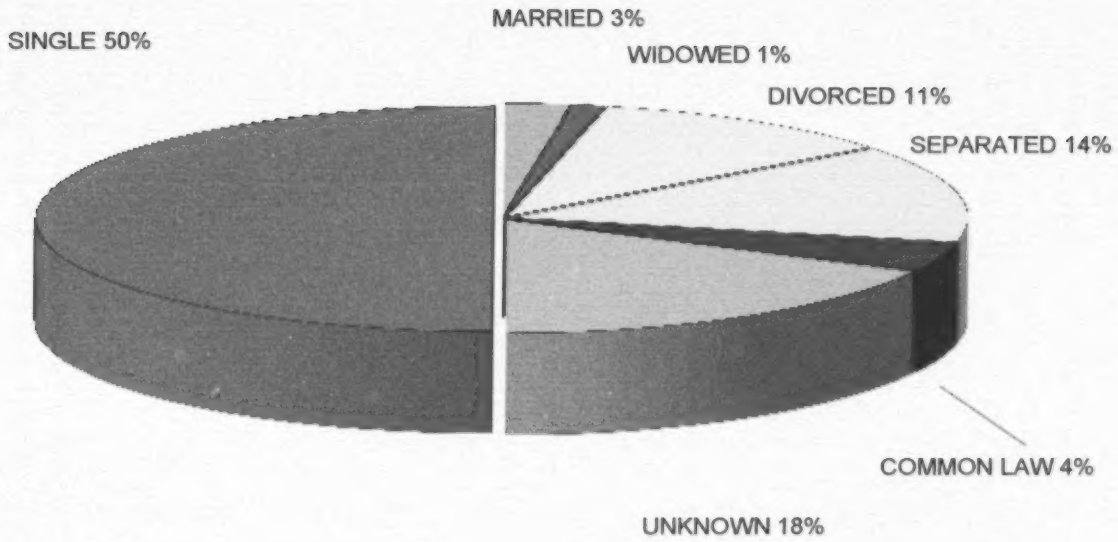
STATISTICAL TABLES

The following statistics refer to the fiscal year of April 1, 2012 to March 31, 2013

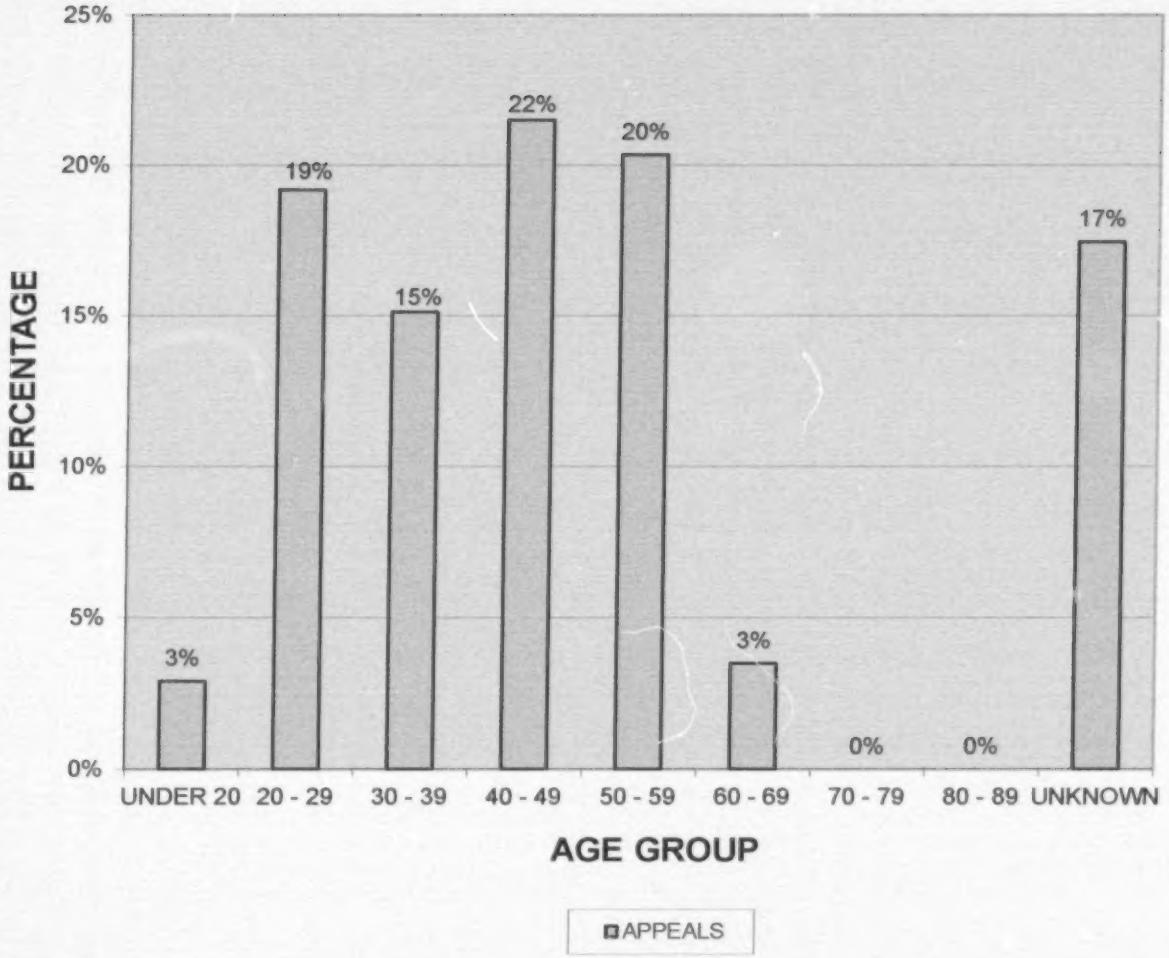
APPEALS BY MONTH
APRIL 1, 2012 TO MARCH 31, 2013



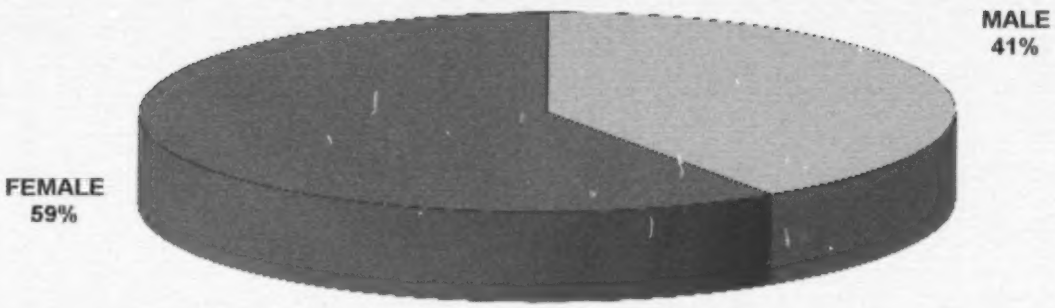
APPEALS BY MARITAL STATUS
APRIL 1, 2012 TO MARCH 31, 2013



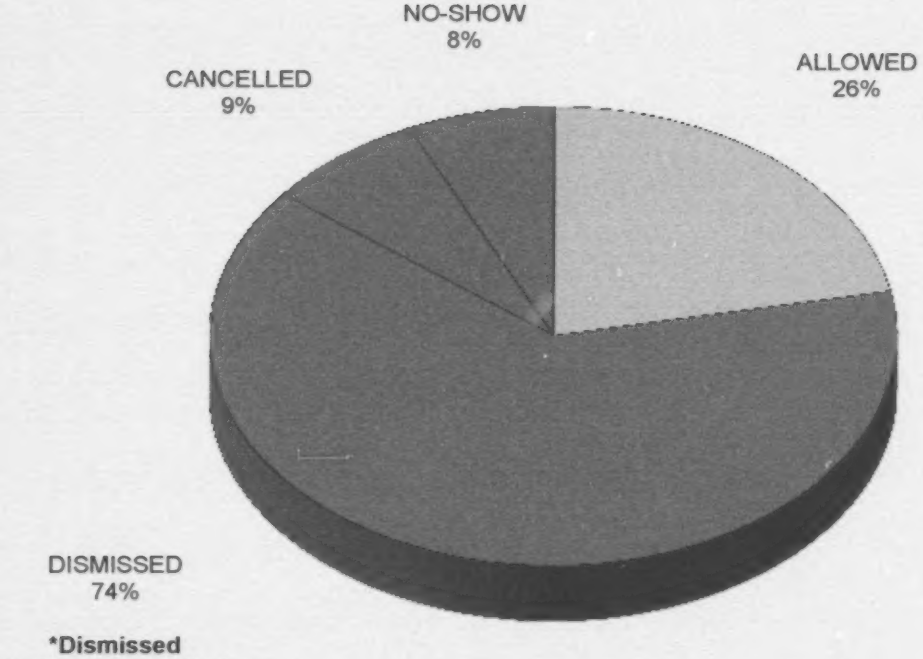
APPEALS BY AGE GROUP
APRIL 1, 2012 TO MARCH 31, 2013



APPEALS BY GENDER
APRIL 1, 2012 TO MARCH 31, 2013

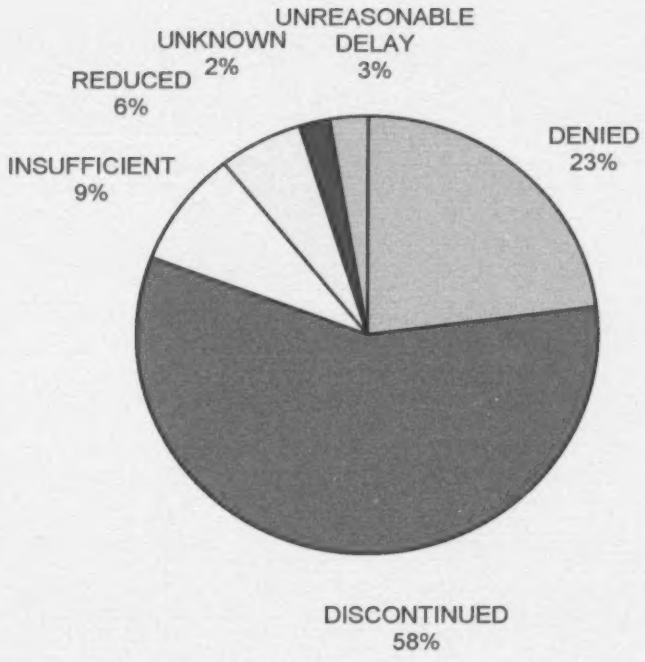


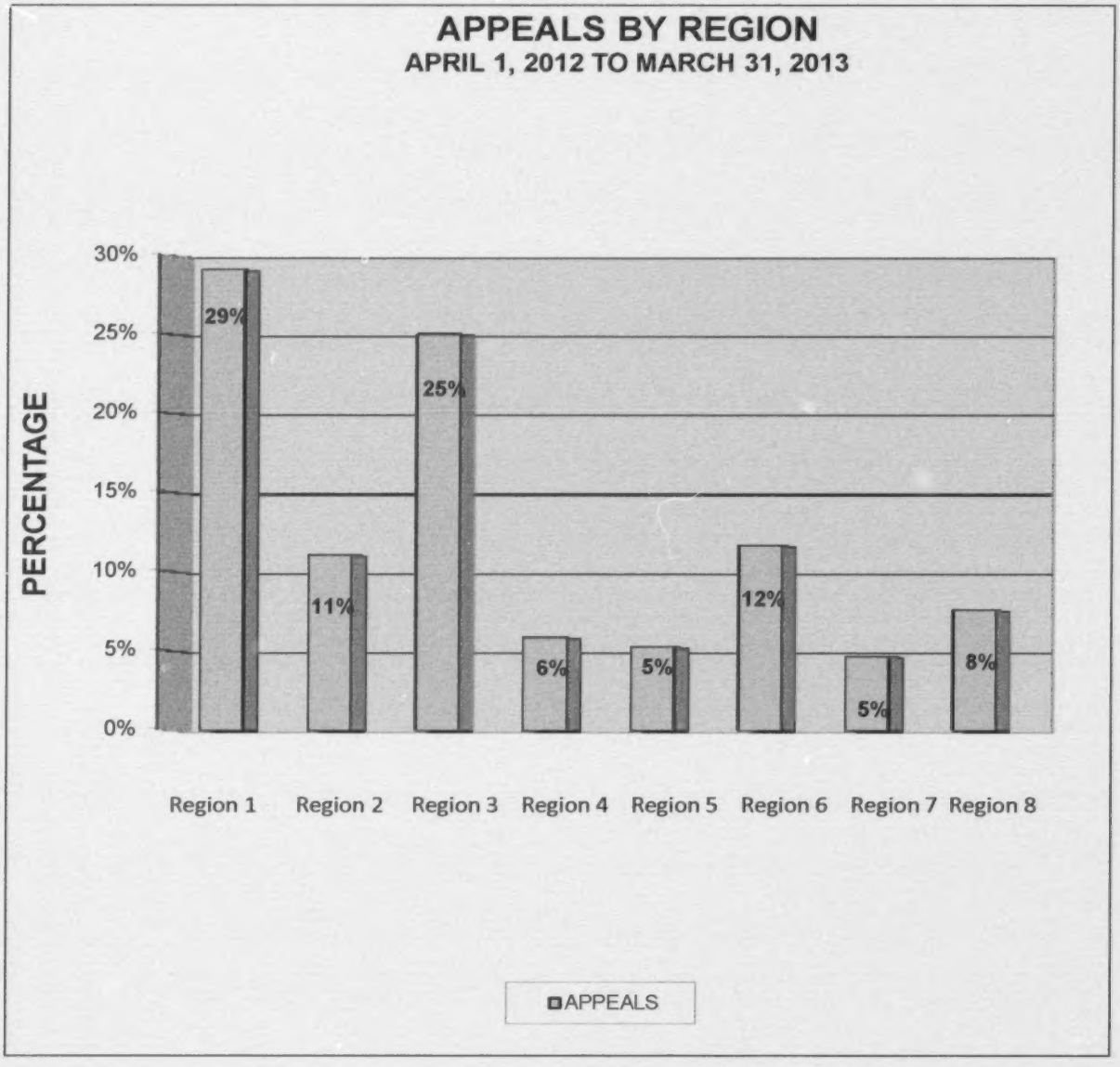
APPEALS BY OUTCOME
APRIL 1, 2012 TO MARCH 31, 2013



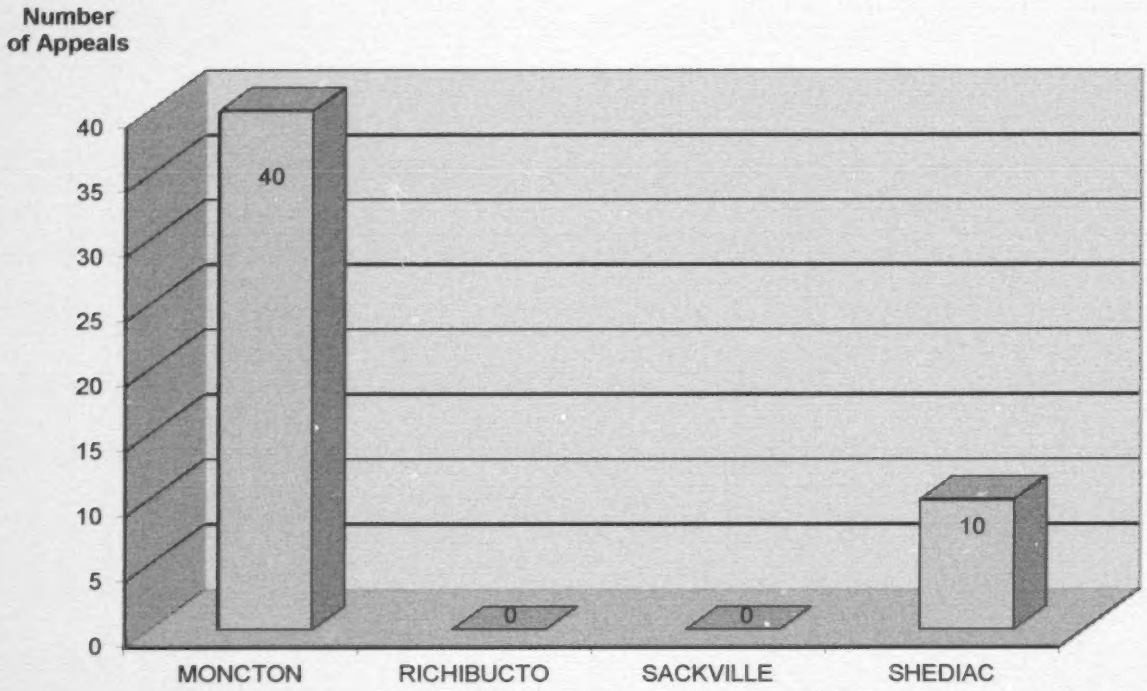
***Dismissed includes Cancelled and No-Show**

APPEALS BY REASON
APRIL 1, 2012 TO MARCH 31, 2013

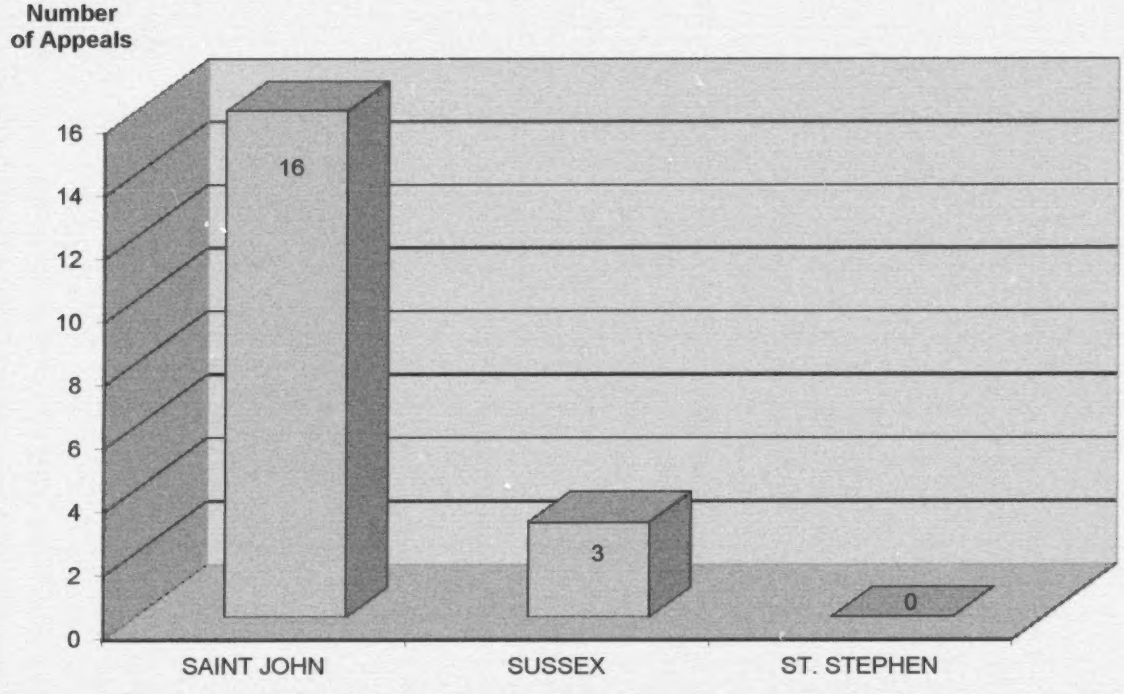



APPEALS BY REGION
APRIL 1, 2012 TO MARCH 31, 2013
PERCENTAGE
30%
25%
20%
15%
10%
5%
0%
29%
11%
25%
6%
5%
12%
5%
8%
Region 1
Region 2
Region 3
Region 4
Region 5
Region 6
Region 7
Region 8
APPEALS

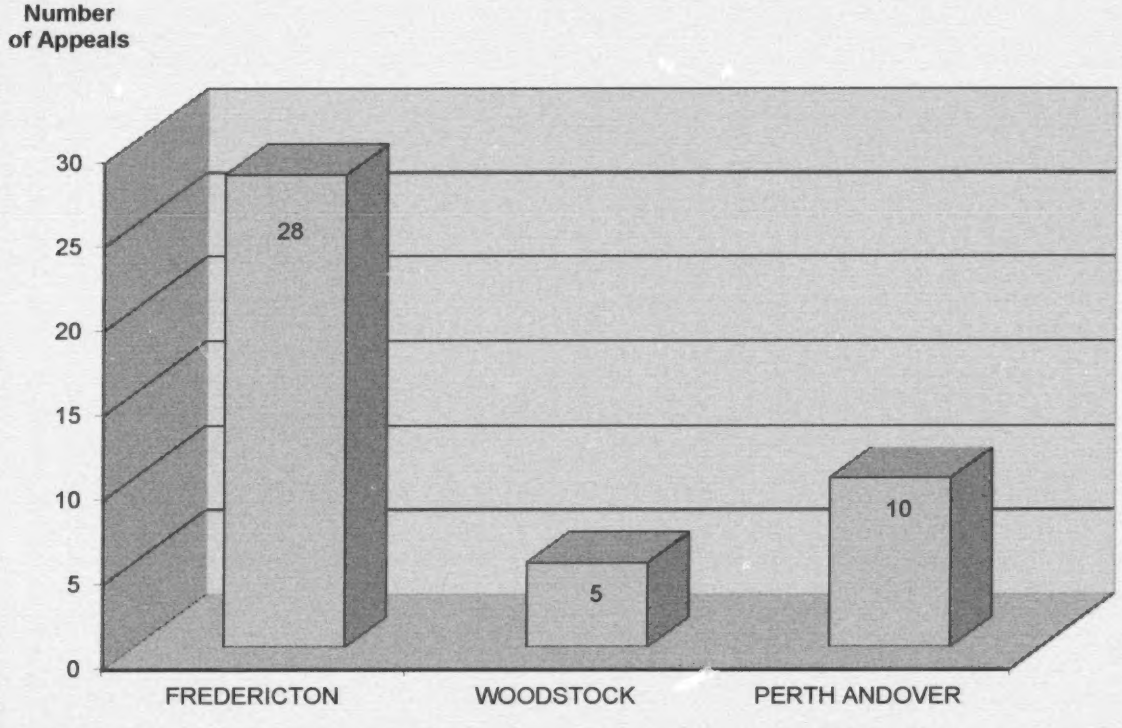
APPEALS BY REGION 1
APRIL 1, 2012 TO MARCH 31, 2013



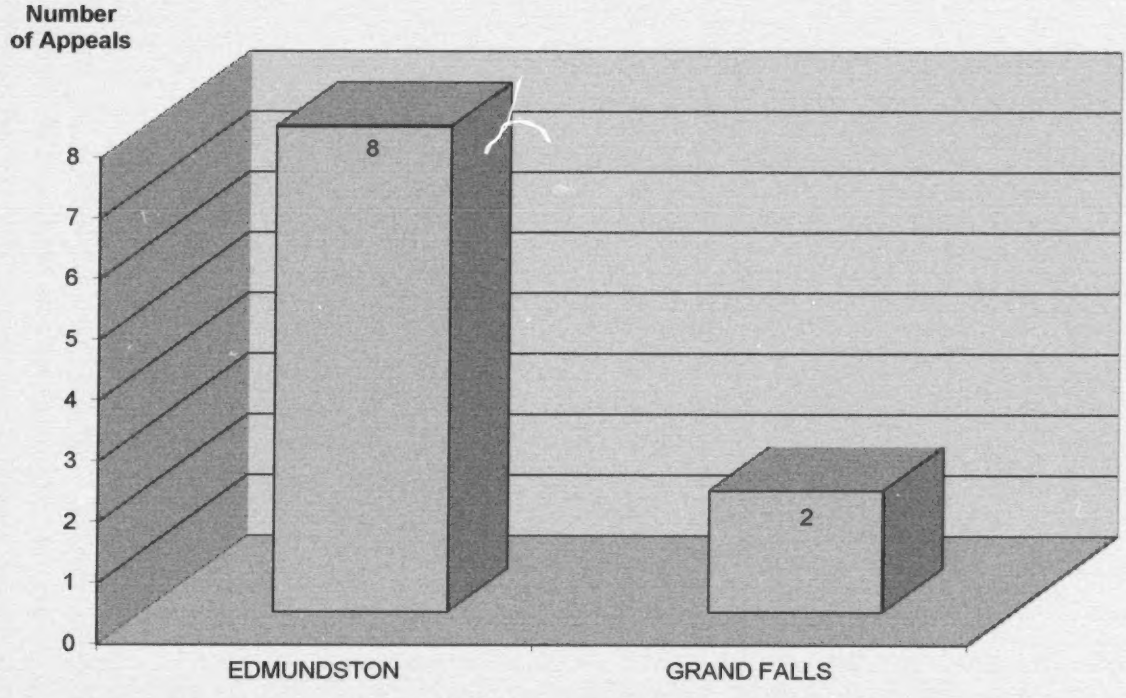
APPEALS BY REGION 2
APRIL 1, 2012 TO MARCH 31, 2013



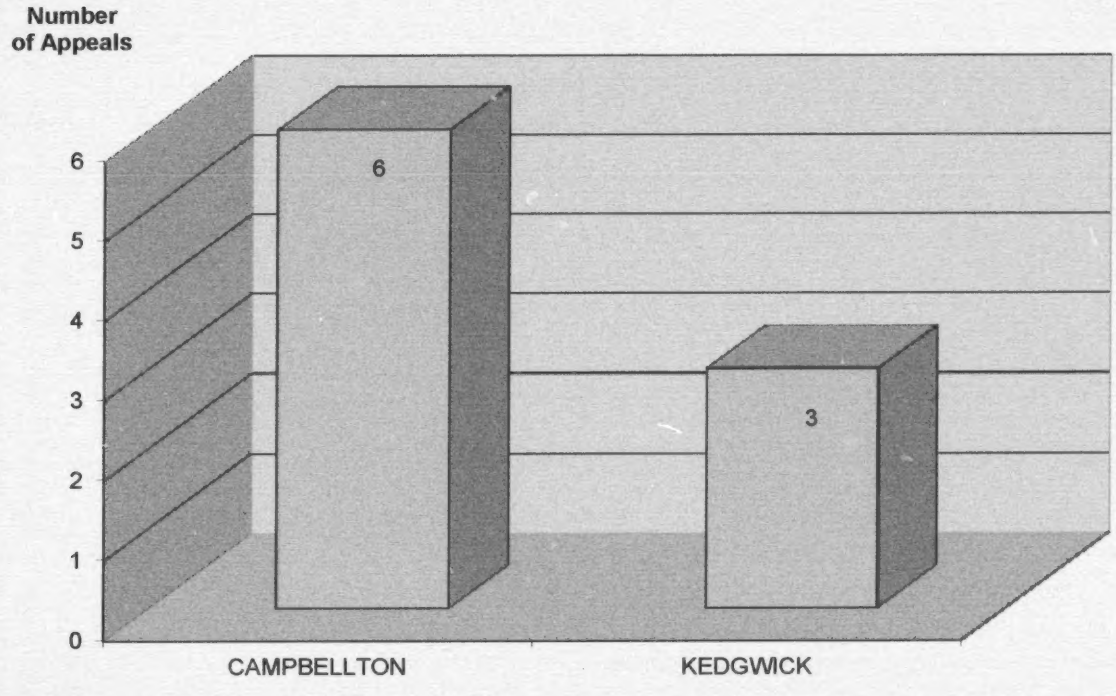
APPEALS BY REGION 3
APRIL 1, 2012 TO MARCH 31, 2013



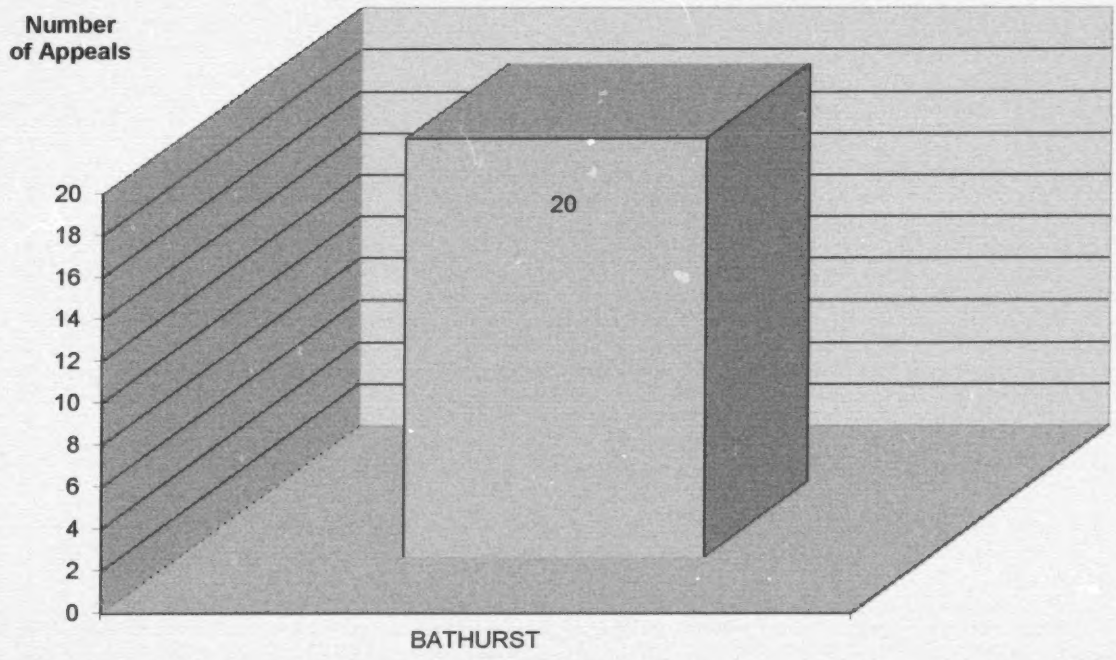
APPEALS BY REGION 4
APRIL 1, 2012 TO MARCH 31, 2013



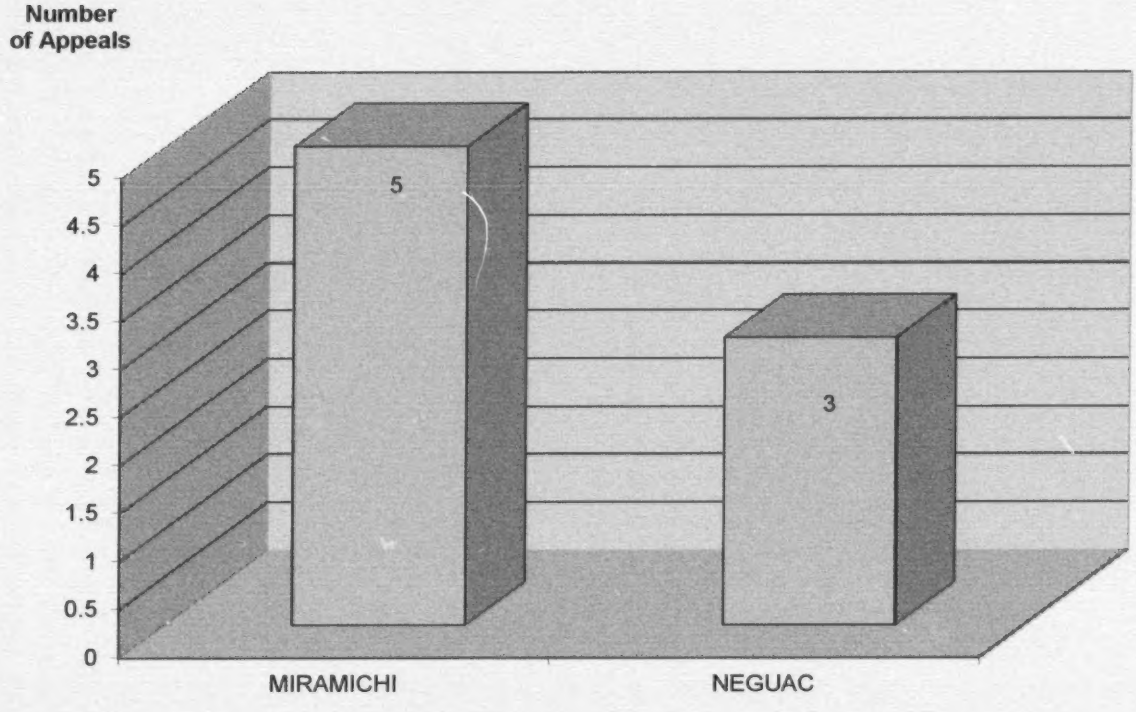
APPEALS BY REGION 5
APRIL 1, 2012 TO MARCH 31, 2013



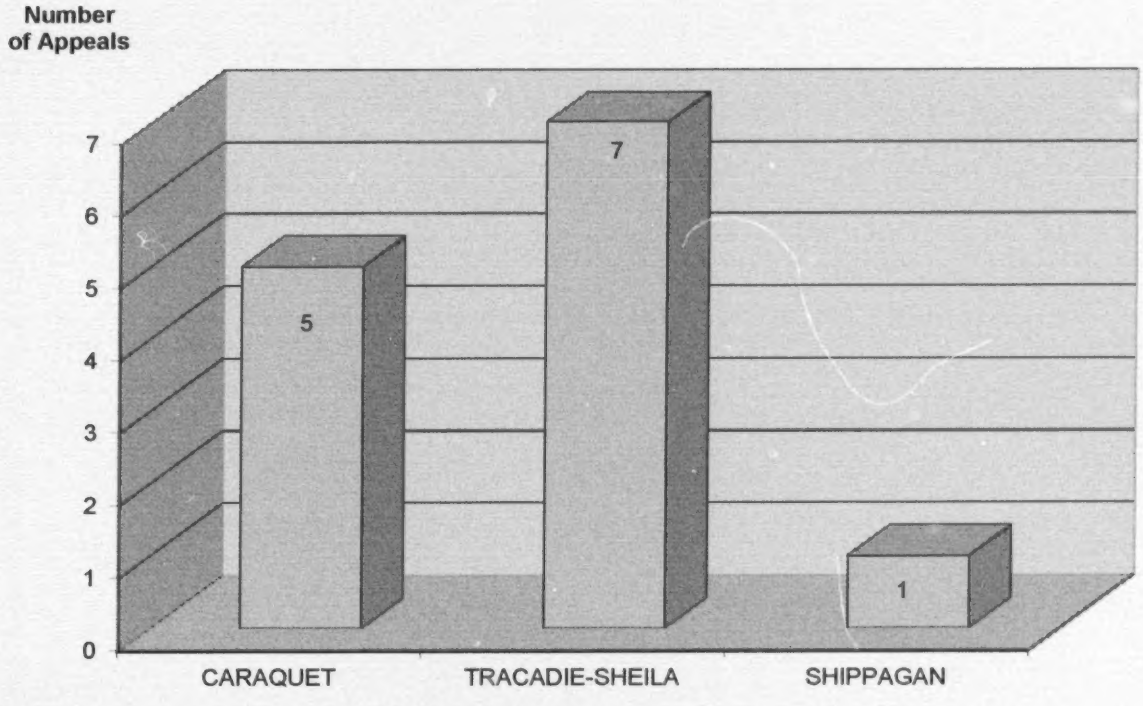
APPEALS BY REGION 6
APRIL 1, 2012 TO MARCH 31, 2013



APPEALS BY REGION 7
APRIL 1, 2012 TO MARCH 31, 2013



APPEALS BY REGION 8
APRIL 1, 2012 TO MARCH 31, 2013



ACTIVITIES OF THE OMBUDSMAN

A decision of the Family Income Security Appeal Board is final and conclusive. However persons dissatisfied with a decision of the Board may take their complaints to the Ombudsman. He cannot change the decision of a Board. Nevertheless, the Ombudsman can review the circumstances to determine whether or not the complaint can be substantiated. He may also make recommendations to: the Board, directly to the Minister of Social Development, or deal with the situation in his Annual Report.

ADDED RESPONSIBILITIES

The Act and Regulation 95-61 require the Chairperson to convene a hearing within 20 days of receipt of an appeal. The appellant and all parties to the appeal are notified in writing of the date, time and place of the hearing at least 5 days prior to the hearing.

Hearings are held in the language of the appellant's choice in a neutral location. Appeal locations are chosen specifically with the appellant in mind. Appellants speaking a third language, and having difficulty in English and French, may bring their own interpreter for other languages.

Although hearings are conducted in an informal manner, the Board's procedures must rigidly conform to the Principles of Administrative Law and the Rules of Natural Justice.

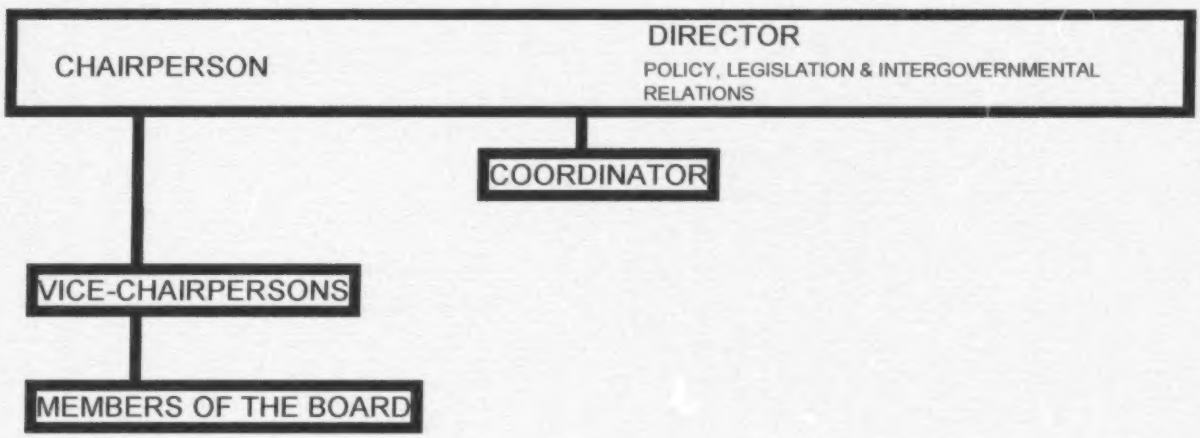
Each appellant is entitled to be accompanied by one person of their choice and to call witnesses. They may choose to be represented by legal counsel or they may delegate another individual to act on their behalf. The Department of Social Development is represented at the hearing by the designated officer to present evidence and to call witnesses as necessary.

An appeal is always heard by the Chairperson, or a Vice-Chairperson who acts as Chairperson, and two board members. The decision of the Appeal Board is final and conclusive as per Section 29(1) of Regulation 95-61, *Family Income Security Act*.

The Board hearing the case reviews the evidence and makes its decision immediately following the hearing. The hearing documents are then written by the Chairperson or a Vice-Chairperson and signed by all three members before the next scheduled case is heard. The formal decision was written and forwarded to the Appeal Board office. All decisions are processed and reviewed prior to signature by the Chairperson or a Vice-Chairperson. Each decision must be rendered within 15 days of the scheduled hearing.

AUTHORITY STRUCTURE OF THE FAMILY INCOME SECURITY APPEAL BOARD

AUTHORITY:



ACCOUNTABILITY: